

1 **LAW OFFICES OF DALE K. GALIPO**
2 Dale K. Galipo, Esq. (SBN 144074)
3 dalekgalipo@yahoo.com
4 Marcel F. Sincich, Esq. (SBN 319508)
5 msincich@galipolaw.com
6 21800 Burbank Boulevard, Suite 310
7 Woodland Hills, CA 91367
8 Phone: (818) 347-3333 | Fax: (818) 347-4118

9 **LAW OFFICES OF GRECH & PACKER**
10 Trenton C. Packer (SBN 241057)
11 tpacker@grechpackerlaw.com
12 7095 Indiana Ave Ste 200
13 Riverside, CA 92506
14 Phone: (951) 682-9311

15 *Attorneys for Plaintiff EDGAR SOLIS*

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 EDGAR SOLIS,

19 Plaintiff,

20 v.

21 STATE OF CALIFORNIA; and
22 MICHAEL BELL,

23 Defendants.

24 Case No.: 5:23-cv-00515-HDV-JPR

25 [Honorable Hernán D. Vera]
26 Magistrate Judge Jean P. Rosenbluth

27 **PLAINTIFF'S OPPOSITION TO
28 DEFENDANTS' MOTION *IN LIMINE*
29 NO. 1 TO EXCLUDE EVIDENCE OF
30 OFFICERS' PERSONNEL RECORDS**

31 **Hearing on Motions *in Limine*:**

32 October 1, 2024 at 09:00 a.m.

33 **Final Pretrial Conference:**

34 October 8, 2024 at 10:00 a.m.

35 **Jury Trial**

36 October 29, 2024 at 09:00 a.m.

37 Ctrm: 10D

MEMORANDUM OF POINTS AND AUTHORITIES

2 This is a §1983 civil rights and state tort case arising from the use of excessive
3 and unreasonable officer-involved shooting of Plaintiff Edgar Solis (“Solis”) by
4 Defendant State of California Highway Patrol (“CHP”) Officer Michael Bell
5 (“Bell”). Three officers rapidly approached Solis, followed by a series of tactical
6 errors and unreasonably escalating the situation when Officer Bell reached into the
7 vehicle and Deputy Waltermire struck the windshield with his baton. In fear, Solis
8 drove slowly away from the officers’ attack and then fled on foot. Then, while Solis
9 was not an immediate threat of death or serious bodily injury, and while there were
10 several reasonable alternatives available, Officer Bell unreasonably fired several
11 rounds at Solis, including to his back. Injured and running for his life, Solis
12 continued a short distance before Officer Bell fired a second volley of shots,
13 impacting Solis and causing him to fall to the ground.

14 Defendants present Motion seeks to exclude “officers’ personnel records.” Yet,
15 Plaintiff cannot determine from Defendants’ motion what Defendants are referring to.
16 Nevertheless, as Plaintiff mentioned in the Parties’ conference of counsel, Plaintiff
17 seeks to keep this trial focused on the conduct of Officer Bell and the information
18 known to him when he used excessive and unreasonable force against Solis.
19 Defendants will not agree to exclude irrelevant information unknown to Officer Bell
20 and seek admission of Solis’ past conduct that had nothing to do with this incident.
21 Now Defendants want Officer Bell’s (and some unknown other officers’) past
22 conduct to be hidden from the jury. Defendants informed Plaintiff, “Defendants will
23 move to bar evidence or questioning regarding Officer Bell’s or any other testifying
24 officer’s personnel records – including any citizen complaints, investigations, or
25 disciplinary action.” With no further detail. (Sincich Decl. ¶2.)

26 Without knowing what specifically Defendants seek to exclude, Plaintiff still
27 informed Defendants that “Plaintiff does not plan to introduce evidence of Officer
28 Bell’s personnel records as described unless the door is opened by the defense.

1 Likewise, plaintiff requests that irrelevant, information unknown, prejudicial
2 information and impermissible character evidence pertaining to plaintiff (subject to
3 plaintiff's motions) should also be excluded and plaintiff seeks a joint agreement of
4 such between the parties. Thus, plaintiff believes this motion is unnecessary and a
5 stipulation is appropriate, but if filed, plaintiff will oppose to state plaintiff's position
6 on the issues raised." (Sincich Decl. ¶3.)

7 Here Plaintiff reiterates, Plaintiff does not plan to introduce evidence of Officer
8 Bell's personnel records. But this evidence, whatever it may be, is permissible if the
9 door is opened by the defense.

10 Defendants are correct in their statement that this federal Court is not bound by
11 state law on this matter. With Defendants' overbroad definition of "official
12 information" there would be no discovery of police records at all. Under Defendants'
13 theory, law enforcement, as the sword of the State, could act wrongfully in the dark,
14 hidden from the public they are sworn to serve and protect. For instance, the
15 government has no legitimate interest in preserving the confidentiality of violations of
16 citizens' inalienable rights. On the other hand, the people, both in general and the
17 victims of these violations, have a strong interest in discovering and shining light on
18 these violations – so that they will not continue.

19 As to Defendants' claim for privilege. Defendants fail to state what information
20 they claim is privileged. Further, Defendants fail to even identify what officer they
21 claim is asserting a privilege under state law. Indeed, the Plaintiff cannot adequately
22 oppose such an overbroad and unclear motion and Plaintiff contends that the Court
23 does not have adequate information to grant such a motion. This Court addressed this
24 exact situation in his Civil Trial Order, stating, "Motions *in limine* should address
25 specific issues (e.g., not "to exclude all hearsay")." (Civil Trial Order at 8:10;
26 <https://www.cacd.uscourts.gov/honorable-hern%C3%A1n-d-vera>.) Defendants'
27 Motion request the court "to exclude all officers' personnel records." For this reason
28 alone, the Court should deny Defendants' Motion.

1 As to relevance, Plaintiff bears the burden of proving his claims. In doing so
2 the jury may have to decide which testimony to believe including taking into account
3 “whether other evidence contradicted the witness’s testimony.” Ninth Circuit Model
4 Jury Instructions, No. 1.14. Further, the jury will consider whether Officer Bell
5 intended to deprive Plaintiff of his enjoyment of his interests in protected rights
6 (CACI No. 3066); the jury will consider what a reasonably careful officer would have
7 done in the situation (CACI No. 401); and the jury will consider whether Officer
8 Bell’s conduct was malicious, oppressive or in reckless disregard of Plaintiff’s rights
9 (9th Cir. Jury Instruction No. 5.5). Evidence is relevant if it has any tendency to may
10 a fact of consequence more or less probable than it would without the evidence. Fed.
11 R. Evid. 401; *see, e.g.*, *O’Neill v. Krzeminski*, 839 F.2d 9, 11 (2d Cir. 1988) (no error
12 in admitting prior act of excessive force by officer, which was relevant to show
13 intent). Relevant evidence is otherwise admissible. Fed. R. Evid 402.

14 Defendants scant comment as to Rules 403 and 404 are inadequate for a ruling.
15 Nevertheless, Defendants have failed to show that they will suffer any prejudice and
16 failed to describe any character evidence they seek to exclude. *But see Kopf v. Skyrn*,
17 993 F.2d 374, 381 (4th Cir. 1993) (admitting evidence of prior shooting as evidence
18 that might have convinced the jury of the officer’s intent and lack of mistake under
19 Rule 404(b)); *see also United States v. Mohr*, 318 F.3d 613, 619 (4th Cir. 2003)
20 (“‘[u]nfair prejudice’ under Rule 403 does not mean the damage to a defendant’s case
21 that results from the legitimate probative force of the evidence. Indeed, our
22 adversarial system depends on opposing parties offering evidence that will strengthen
23 their respective positions and damage that of their opponents.”); *see Taylor v. The Los
24 Angeles Police Department*, 1999 WL 33101661, 4-7 (C.D. Cal. 1999) (prior
25 complaints “may show, among other things, a proclivity of such officers toward
26 violent behavior or possible bias”); *Hampton v. City of San Diego*, 147 F.R.D. 227,
27 229 (S.D. Cal. 1993) (internal affairs history may be relevant to issues of credibility
28 and the motive of the officers, and may demonstrate a continuing course of conduct

1 reflecting malicious intent); *Porter v. Osborn*, 2009 WL 5068632 (D. Alaska, Dec.
2 17, 2009) (“Certainly, evidence of prior acts of violence that are of the same or
3 similar nature to the incident in question might be admissible to show Osborn’s intent
4 as to the claim alleged, given that the question on remand is whether Osborn had a
5 “purpose to harm” Casey, which Osborn denies.”).

6 Plaintiff sought an agreement from Defendants to exclude all character
7 evidence. But Defendants insist on making a significant portion of this case about
8 Plaintiff’s pre-incident conduct, even unknown to Defendant Bell, as opposed to what
9 Defendant Bell and Plaintiff Solis did during the incident. Defendants intend to paint
10 Solis as a dangerous career criminal and meth and PCP addict in order to inflame the
11 passions of the jury such that they would not find liability in his favor or would award
12 him nominal damages as punishment for his unrelated prior acts. The threat of undue
13 prejudice to Plaintiff is compounded when juxtaposed to Defendants intent to paint
14 Defendant Bell as a man who follows every policy and training technique perfectly to
15 justify shooting Solis while Solis the criminal was not complying with commands.

16 Plaintiff submits that if Defendants present evidence or testimony at trial that,
17 for example, implies that Defendant Bell has an otherwise clean record, is a decorated
18 and respected peace officer, has a gentle and benevolent character, is one of the
19 State’s finest, or testimony to that effect – then Defendants will have opened the door
20 to the admission of any and all of his prior bad acts as rebuttal and/or impeachment
21 evidence. Fed. R. Evid. 607; *United States v. Ziska*, 267 F. App’x 717, 718 (9th Cir.
22 2008) (testimony of defense witnesses opened the door to rebuttal evidence). In other
23 words, evidence of testifying police officers’ prior bad acts, while of limited
24 relevance with respect to the shooting itself, may acquire forceful relevance as
25 rebuttal or impeachment evidence if Defendants open the door at trial.

26 CONCLUSION

27 For the foregoing reasons, Plaintiff respectfully requests that this Court deny
28 Defendants’ Motion *in Limine* No. 1 in its entirety.

1
2 Respectfully submitted,

3 DATED: September 24, 2024,

LAW OFFICES OF DALE K. GALIPO
LAW OFFICES OF GRECH & PACKER

4
5 /s/ Marcel F. Sincich
6 Dale K. Galipo
7 Trenton C. Packer
8 Marcel F. Sincich, *Attorney for Plaintiff*

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CERTIFICATE OF COMPLIANCE

2 The undersigned counsel of record for Plaintiff certifies that this brief contains
3 1,382 words, which complies with the word limit of L.R. 11-6.1.

5 | DATED: September 24, 2024

**LAW OFFICES OF DALE K. GALIPO
LAW OFFICES OF GRECH & PACKER**

By: /s/ Marcel F. Sincich

Dale K. Galipo
Trenton C. Packer
Marcel F. Sincich
Attorneys for Plaintiff